The New UAE Commercial Companies Law

Bashar H. Malkawi

UAE Commercial Companies Law (Federal Law No. 2 of 2015 (CCL))

Application:

* + - * + applies to “*commercial companies established in the State. The provisions concerning foreign companies set forth.....shall apply to foreign companies that have in the State a place to conduct any activity therein or establish a branch or representative office in the State.”* (Article 3)

Companies which do not take one of the corporate forms in the CCL shall be void (Article 9)

Companies have until 1 July 2016 to adjust their positions and comply or will be deemed dissolved (Article 374) and daily penalties will apply (Article 357)

New CCL in effect from 1 July 2015

No “game changers” –status quo largely maintained

* + - * + Broadly the same corporate forms but note new provision for single shareholder companies (Article 8(3)) and holding company structures (Part 6, chapter 1)
        + No relaxation of foreign ownership restrictions
        + Certain ambiguities under the old law remain

However, there are some notable amendments, for example:

* + - * + LLC share mortgages expressly permitted (Article 79)
        + Limiting the ability of companies which enter into different transactions to claim that an employee/agent did not have express or actual authority to enter into such transactions (Article 23). Once frequently used argument.
        + Financial assistance provision (Article 222)
        + New federal companies registrar, although role likely limited (Articles 33-38)
        + Wider directors duties
        + Wider prohibition on loans to directors (Article 153)
        + Free float on IPO reduced from 55% to 30% (Article 117)
        + Changes in quorum requirements and thresholds
        + Companies may only conduct activities outside the State if its Memorandum of Association so provides (Article 11(2))

Exemptions

The CCL does not apply to:

Companies exempt pursuant to Cabinet resolution if special provision is made in the memorandum or articles (Article 4(1)(A))

Companies wholly owned by Federal or Emirate Government and other companies held in full by them if special provision is contained in the memorandum and articles (Article 4(1)(B))

Companies in which the Federal and Emirate Government (directly or indirectly) own 25% and which operate in specific industries (Article 4(1)(C))

Companies exempted under the Current CCL and under special Federal laws (Article 4(1)(D) and (E))

Free zone companies (Article 5)

Various provisions of the Commercial Code (Federal law No. 18 of 1993) apply to CCL companies (e.g. the bankruptcy regime)

Civil companies

Key Issues

New provision stating that all provisions applying to Joint Stock Companies apply to LLCs (Article 104*)* e.g. do the following apply to both JSCs and LLCs?

Nominal value of JSC shares (Article 207)

Director nationality requirements (Article 151)

Prohibition on loans to directors (Article 153)?

New restriction on directors powers to take security over moveable property (Article 154)?

Prohibition on financial assistance (Article 222)?

Companies may only conduct activities outside the State if its Memorandum of Association so provides (Article 11(2))

Consequences of non-compliance (potential dissolution) - Article 374 v Article 170

Will the new CCL apply to decree companies? Must free zones expressly disapply the new CCL?